

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

**DEFENDANTS' *DAUBERT* MOTION TO EXCLUDE THE OPINIONS OF
JAMES E. RAFALSKI**

Pursuant to Federal Rule of Evidence 702, Defendants AmerisourceBergen Drug Corporation, Cardinal Health, Inc., and McKesson Corporation hereby move to exclude the opinions of James E. Rafalski.¹ The bases for this motion are set forth in the accompanying memorandum of law, which is incorporated herein. Pursuant to LR Civ. P. 7.1(a), copies of all

¹ James Rafalski was the subject of a *Daubert* motion filed in Track 1 of the MDL. In Track 1, Judge Polster granted Defendants' motion to exclude Mr. Rafalski's legal opinions but otherwise allowed his testimony. *See* Ex. 1 (Opinion and Order Regarding Defendants' Motions to Exclude Opinions of James Rafalski and Craig McCann, 17-md-2804). Since then, Mr. Rafalski's opinions have become even more extreme (going from identifying orders meriting further review to orders "likely to be diverted"), just as ***newly developed evidence since Track 1*** shows his opinions to lack any methodological basis.

documents, affidavits, and other such materials or exhibits referenced in the memorandum and upon which this motion relies are attached to this motion.

Dated: October 2, 2020

Respectfully submitted,

/s/ Timothy C. Hester

Timothy C. Hester (DC 370707)
Laura Flahive Wu
Andrew P. Stanner
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Tel: (202) 662-5324
thester@cov.com
lflahivewu@cov.com
astanner@cov.com

/s/ Paul W. Schmidt

Paul W. Schmidt
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Tel: (212) 841-1000
pschmidt@cov.com

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)
jwakefield@flahertylegal.com
Jason L. Holliday (WVSB #12749)
jholliday@flahertylegal.com
FLAHERTY SENSABAUGH BONASSO PLLC
P.O. Box. 3843
Charleston, WV 25338-3843
Telephone: (304) 345-0200

Counsel for McKesson Corporation

/s/ Gretchen M. Callas

Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553

Charleston, WV 25322
Tel: (304) 340-1000
Fax: (304) 340-1050
gcallas@jacksonkelly.com

/s/ Robert A. Nicholas
Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

Counsel for AmerisourceBergen Drug Corporation

/s/ Steven R. Ruby
Michael W. Carey (WVSB No. 635)
Steven R. Ruby (WVSB No. 10752)
David R. Pogue (WVSB No. 10806)
Raymond S. Franks II (WVSB No. 6523)
CAREY DOUGLAS KESSLER & RUBY PLLC
901 Chase Tower, 707 Virginia Street, East
P.O. Box 913
Charleston, WV 25323
Telephone: (304) 345-1234
Facsimile: (304) 342-1105
mwcarey@csdlawfirm.com
sruby@cdkrlaw.com
drpogue@cdkrlaw.com
rsfranks@cdkrlaw.com

/s/ Enu Mainigi
Enu Mainigi
F. Lane Heard III
Ashley W. Hardin
Jennifer G. Wicht
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com

lheard@wc.com
ahardin@wc.com
jwicht@wc.com

Counsel for Cardinal Health, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on October 2, 2020, the foregoing *Defendants' Daubert Motion to Exclude the Opinions of James E. Rafalski* was served using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: October 2, 2020

/s/ Timothy C. Hester
Timothy C. Hester